IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE FOURTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

And

THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION NO : 19701 of 2003

Between:

1. M.Vema Reddy, S/o. Narayan Reddy, Junior Assistant, Office of Prohibition and Excise Station, Uppal, Ranga Reddy District.
2. L.Balagangadhar, S/o. Sattaiah, Junior Assistant, Office Of Prohibition and Excise Superintendent, Ranga Reddy District, Resident of Hyderabad/
3. M.Phaninder Reddy, S/o. Venkat Reddy, Junior Assistant, Office of Prohibition and Excise Superintendent, Ranga Reddy District, resident of Hyderabad.
4. B.Ashok, S/o. Sattaiah, Junior Assistant, Office of Prohibition and Excise Superintendent, Ranga Reddy District, resident of Hyderabad.

..... PETITIONERS

AND

1. Government of Andhra Pradesh, represented by its Secretary, Revenue (Excise-II) Department,

Secretariat, Hyderabad.

2. The Commissioner of Prohibition and Excise, Government of Andhra Pradesh, Nampally, Hyderabad.

3. The Deputy Commissioner, Prohibition and Excise, Hyderabad Division, Nampally, Hyderabad.

4. G.Dastagiri, s/o. Not known, Prohibition and Excise Sub-Inspector, Office of Deputy Commissioner, P&E, Mahaboobnagar.

5. Md.Basheeruddin, s/o. Not known, Prohibition and Excise Sub-Inspector, Office of Deputy Commissioner, P&E, Mahaboobnagar.

6. R.Tharia, s/o. Not known, Prohibition and Excise Sub-Inspector, Office of Deputy Commissioner, P&E, Nizamabad District.

7. Syed Khaja, s/o. not known, Prohibition and Excise Sub-Inspector, Office of Deputy Commissioner, P&E, Mahaboobnagar.

8. M.A. Waheed, s/o. not known, Prohibition and Excise Sub-Inspector, Office of Deputy Commissioner, P&E, Mahaboobnagar.

9. Y.Ramulu, s/o. not known, Prohibition and Excise Sub-Inspector, Office of Deputy Commissioner, P&E, Nizamabad District.

10. Abdul Haleem, s/o. not known, Prohibition and Excise Sub-Inspector, Office of Deputy Commissioner, P&E, Mahaboobnagar.

11. L.Sivaiah, s/o. not known, Prohibition and Excise Sub-Inspector, Office of Deputy Commissioner, P&E, Mahaboobnagar.

12. Abdul Basith, s/o. not known, Prohibition and Excise

Sub-Inspector, Office of Deputy Commissioner, P&E,

Mahaboobnagar.

13. Md. Mukhtar, s/o. not known, Prohibition and Excise

Sub-Inspector, Office of Deputy Commissioner, P&E,

Mahaboobnagar.

14. M.Joseph, s/o. not known, Prohibition and Excise

Sub-Inspector, Office of Deputy Commissioner, P&E,

Mahaboobnagar.

15. Md. Muzaffar, s/o. not known, Prohibition and Excise

Sub-Inspector, Office of Deputy Commissioner, P&E,

Mahaboobnagar.

16. Sheshibhushanam, s/o. Maharudrappa, Prohibition and Excise

Sub-Inspector, Office of Deputy Commissioner, P&E,

Nizamabad District.

17. G.Govind Reddy, s/o. G.Vishwanath Reddy, Prohibition and

Excise Sub-Inspector, Prohibition and Excise Station, Dhulpet,

Hyderabad.

18. R.Ramanand, s/o. Venkat Swamy, Prohibition and

Excise Sub-Inspector, Prohibition and Excise Station, Dhulpet,

Hyderabad.

19. Abdul Ateeq, s/o. Abdul Rasool, Prohibition and Excise Sub-Inspector, P&E., Nizamabad.

20. S.Venkateshwar Rao, s/o. not known, Prohibition and Excise Sub-Inspector, Kapitan Distillery, Balanagar, Hyderabad.

21. R.Srinivas, s/o. Venkatesham, Prohibition and Excise Sub-Inspector, Office of Prohibition and Excise Station, Tandur,

Ranga Reddy District.

22. K.Raj Prakash, s/o. not known, Prohibition and Excise

Sub-Inspector, Office of Deputy Commissioner, P&E,

Nizamabad District.

23. B.Chakradhar Rao, s/o. Narsimha Rao, Prohibition and Excise

Sub-Inspector, Office of Deputy Commissioner, P&E, Nizamabad,

Nizamabad District.

24. L.Siviah, s/o. L.Ramulu, Prohibition and Excise Sub-Inspector, Office of Deputy Commissioner, P&E, Mahaboobnagar.
25. B.Sailoo, s/o. not known, Prohibition and Excise Sub-Inspector, Office of Deputy Commissioner, P&E, Nizamabad,
26. M.A. Waheed Khan, s/o. not known, Prohibition and Excise Sub-Inspector, Office of Deputy Commissioner, P&E, Mahaboobnagar.
27. K.Laxmaiah, s/o. Venkanna, Prohibition and Excise Sub-Inspector, Office of Deputy Commissioner, P&E, Mahaboobnagar.
28. Md. Mushtaq, s/o. Md. Moulana, Prohibition and Excise Sub-Inspector, Office of Deputy Commissioner, P&E, Mahaboobnagar.
29. B.Sudhakar, s/o. B.Narsimulu, Prohibition and Excise Sub-Inspector, Director of Distilleries and Breweries, A.P. Nampally, Hyderabad.
30. Abdul Hameed, s/o. not known, Prohibition and Excise Sub-Inspector, Office of Deputy Commissioner, P&E, Nizamabad.
31. K.Satyanarayana Reddy, s/o. K.Ram Reddy, Prohibition and Excise Sub-Inspector, Office of Prohibition and Excise Station, Maheswaram, Ranga Reddy District.
32. N.Sahadev, s/o. Swamy, Prohibition and Excise Sub-Inspector, Office of the Prohibition and Excise Station, Kachiguda, Hyderabad.
33. K.Mohan Reddy, s/o. Laxma Reddy, Prohibition and Excise Sub-Inspector, Office of Prohibition and Excise Station, Ibrahimpatnam, Ranga Reddy District.

34. G.Madhusudhan Reddy, s/o. Rajamalla Reddy,

Prohibition and Excise Head Constable, Quthbullapur

Excise Station, Ranga Reddy District.

35. L.Srinivasa Reddy, S/o. Bal Reddy, Prohibition and Excise

Head Constable, Office of the Assistant Commissioner,

(Enforcement), Jambagh, Hyderabad.

(Respondents 34 and 35 are added as per Court orders in WPMP.

No.18487/2004, dated 4.2.2005.).

....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ, order or direction more particularly one in the nature of Writ of Certiorari by (a) calling for the records relating to and connected with order and judgment rendered in O.A.Nos.10817 of 2002, 1450 of 2003 and 126 of 2003, dated 11.8.2003 on the file of the learned A.P. Administrative Tribunal by holding the same as erroneous and unsustainable and quash the same; (b) Declare that O.A.No.126 of 2003 on the file of the A.P. Administrative Tribunal ought to have been allowed and O.A.Nos.10817 of 2002 and 1450 of 2003 ought to have been dismissed; (c) Also call for the records relating to and connected with Memo No.Cr.19159/2002/CPE/H2, dated 21.12.2002 of the 2nd respondent and the consequential Memo Cr.No.A2/3471/2001/1-40, dated 3.1.2003 of the 3rd respondent and quash or set aside by holding the same as arbitrary, illegal, improper and unsustainable apart from being contrary to the Special Rules issued through G.O.Ms.No.950, dated 28.11.1998; (d) Declare that the petitioners herein are entitled to be promoted as Excise Sub-Inspectors on and from the dates on which the unofficial respondents were so promoted to the posts of Excise Sub-Inspectors vide Memo Cr.No.A2/3471/2001/1-40, dated 3.1.2003 of the 3rd respondent with all consequential benefits that flow from out of such notional promotion including seniority, pay fixation and other attendant benefits etc., and (e) And on that basis, direct the respondents to consider the cases of the petitioners for promotion to the post of Excise Sub-Inspectors in terms of the statutory rules issued through G.O.Ms.No.950, dated 28.11.1998 in the existing available vacancies.

Counsel for the Petitioners: MR.NUTY RAM MOHAN RAO

Counsel for the Respondent Nos.1 to 3: GP FOR SERVICES II

Counsel for Respondents 17 to 19, 21, 22, 25, 27, 29 and 30 to 33:

MR.M.RATNA REDDY.

Counsel for Respondents 34 and 35: MR.J.R.MANOHAR RAO.

Counsel for Respondents 4 to 16, 18, 23, 24,26 and 28:None appeared.

The Court made the following:

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ORAL ORDER: (per GB.J.)

The Writ Petition is filed assailing the order passed by A.P. Administrative Tribunal (for brevity Tribunal) in O.A.Nos.10817 of 2002, 1450 of 2003 and 126 of 2003, dated 11.8.2003.

2. The matter relates to the promotion to the post of Excise Sub-Inspector under A.P. Excise Subordinate Service Rules. Initially in 1961 to the post of Excise Sub-Inspector, three channels were created, one is by direct recruitment, another by appointment by transfer from Ministerial category and third by promotion from Nakedars and P.Os. 75% of the substantive vacancies in the category of Excise Sub-Inspector are those filled by direct recruitment and 25% by transfer from LDCs in Excise Department and also promotion of Nakedars/Petty Officers (now called as Excise Head Constables). In 1986 ratio was changed viz., 60% to direct recruitment, 25% to Junior Assistants and 15% to Excise Head Constables. Superseding earlier rules, new rules were brought into force in GO.Ms.No.950, dated 28.11.1998 with certain modifications. The ratio between the three categories was fixed at 50:25:25. In the 2nd category, apart from Junior Assistants, the posts of Typists and Junior Stenos in the Excise Department was also added. The ministerial employees under 2nd category filed O.A.No.10266 of 2002 seeking direction to promote them to the posts of Excise Sub-Inspector in accordance with 1998 Rules and

the said O.P. was disposed of as prayed for. However, the Commissioner of Prohibition and Excise issued directions on 21.12.2002 to fill up 19 vacancies of Excise Sub-Inspectors by Excise Head Constables and thereafter the balance vacancies in the ratio of 25:25. Questioning the said order dated 21.12.2002 and consequential proceedings dated 3.1.2003, O.A.No.126 of2003 was filed by the Junior Assistants. Even earlier the Excise Head Constables filed O.A.No.10817 of 2002 to review all the promotions and to fill up the short fall vacancies exclusively by Excise Head Constables on the ground that the Junior Assistants were given promotion in excess of their quota. Some other connected P.As., were heard by the Tribunal and by orders dated 11.8.2003, O.A.No.126 of 2003 filed by the Junior Assistants was dismissed and other O.As., were partly allowed. Aggrieved by the order in O.A.No.126 of 2003, the present Writ Petition has been filed by the Junior Assistants.

3. The learned counsel for the petitioners Mr.Nooty Rama Mohan Rao submits that the Tribunal has committed a grave error in approving the order of the Commissioner directing to fill up of 19 posts of Excise Sub-Inspectors which arose subsequent to the amendment came into force. He submits that the vacancies have to be filled up in accordance with the Rules in vogue and there is no provision for filling up the posts which ought to have been filled prior to 1998 amendment and therefore the order of the Tribunal is liable to be set aside.

4. On the other hand the learned counsel for the unofficial respondents submits that the Ministerial candidates have been promoted in excess of their quota prior to 1998 Rules and therefore the authorities have realized that injustice was done to the inservice Excise Head Constables and for that reason the same was sought to be rectified by filling up the posts by 19 posts initially and thereafter the balance posts in accordance with 1998 Rules, and therefore the order passed by the Tribunal cannot be said to be illegal or arbitrary. Moreover, it is also sought to be contended that the petitioners are in no way prejudiced by the order of the Tribunal and in fact they were already promoted, so also the unofficial respondents. The learned Government Pleader also submits that the authorities having found that Junior Assistants were promoted in excess of their quota and hence to the extent of excess was sought to be filled up by

Excise Sub-Inspectors exclusively and therefore the order of the Tribunal is quite legal and valid

5. It is now conceded before this Court and also can be seen from the material placed before the Tribunal that 42 vacancies arose subsequent to 1998 and the Department also found that prior to 1997, the ministerial employees were promoted to the post of Excise Sub-Inspectors in excess of their quota during the period from 1986 to 1997 to the extent of 19 posts which ought to have been filed by Excise Head Constables. But the fact remains that 42 vacancies have been filled up by 19 Excise Head Constables in the backlog posts and balance was filled up in the ratio of 1:1 as per 1998 Amended Rules. In view of the fact that all the candidates have been accommodated, we find it not appropriate to go into the merits of the case. Even though the learned counsel for the petitioners Mr.Rama Mohan Rao vehemently submits that the principles as enunciated by the Tribunal is wholly illegal and runs contrary to the constitutional mandate and the Judgments of the Supreme Court, we are not inclined to consider the same as no prejudice will be caused to the ministerial promotees except minor variations in respect of seniority only, which could be set right by issuing appropriate directions.

7. Under those circumstances, in order to put a quietus to this litigation and also to set right the injustice which was caused to the inservice Excise Head Constables, we dispose of the Writ Petition with the following directions:

> 1. Out of 42 promotions given in pursuance of 1998 Rules, 23 candidates shall be promoted in accordance with 1:1 ratio and they shall have their respective seniority, but the balance 19 candidates who were promoted on account of non-filling up of the posts which were ear-marked for Excise Head Constables, they shall take their seniority from serial No.24 onwards.
>
> 2. The effect of this direction is that 19 candidates who got promotion will rank juniors to 23 candidates, who were appointed in accordance with 1998 Rules.
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> 3. In this regard the learned counsel for the respondents also have expressed that they have no grievance if such an arrangement is made.

4. The order passed by the Tribunal shall not be treated as a precedent in subsequent matters in view of the peculiar facts and circumstances of the case.

8. With the directions indicated above, the Writ Petition is disposed of. No costs.

G.BIKSHAPATHY, J.

4th February, 2005.

P.S.NARAYANA, J.

SSR

Issue copy in a week.

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..... REGISTRAR

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SECTION OFFICER

To

1. The Secretary, Revenue (Excise-II) Department, Government of Andhra Pradesh, Secretariat, Hyderabad.

2. The Commissioner of Prohibition and Excise,

Government of Andhra Pradesh, Nampally, Hyderabad.

3. The Deputy Commissioner, Prohibition and Excise,

Hyderabad Division, Nampally, Hyderabad.

4. 2 CCs to G.P. for Services-II, High Court of A.P. Hyderabad.
(OUT)

5. 2 CD copies